



Ordinance No. 65 20 20

AN ORDINANCE AUTHORIZING AN AMENDMENT TO MANAGEMENT AND MAINTENANCE AGREEMENT WITH DANAMONT SQUARE, LLC; AUTHORIZING AND APPROVING RELATED MATTERS; AND DECLARING AN EMERGENCY

WHEREAS, Danamont Square, LLC (the “Redeveloper”) has developed what is commonly referred to as the University Station development (the “Project”) on certain parcels of land located within the City of Norwood, Ohio (the “City”) within the general boundaries of Cleneay Avenue, Montgomery Road, the southern corporation line, and the western corporation line (the “Project Site”); and

WHEREAS, certain public improvements (the “Public Improvements”) were developed by the Redeveloper within the Project Site to support the Project and were financed with proceeds received from the sale of the City’s Special Obligation Development Revenue Bonds, Series 2013 (University Station Project) (the “Bonds”) authorized by the Council for the City of Norwood, Ohio (the “Council”) on May 31, 2013 by Ordinance 25-2013; and

WHEREAS, such Public Improvements are managed and maintained by the Redeveloper in accordance with that certain Management and Maintenance Agreement effective September 13, 2013 (the “Management Agreement”), authorized by the Council Ordinance No. 31-2013 on July 9, 2013;

WHEREAS, the Management Agreement contemplated that Metering Devices, as defined in the Maintenance Agreement, would be utilized to collect fees for parking lots or other parking facilities; and

WHEREAS, the City and the Redeveloper now desire to change the method of managing and charging for the use of some of the parking lots and spaces operated pursuant to the Management Agreement; and

WHEREAS, to the extent the City and this Council determine to refinance the outstanding Bonds in the future, and such refinancing is dependent upon approval of the Redeveloper, the City intends to accept such approval or waiver of such approval; now, therefore

BE IT ORDAINED by the City Council of the City of Norwood, State of Ohio:

SECTION 1. Amendment to Management and Maintenance Agreement Amendment. This council hereby approves the Amendment to Management and Maintenance Agreement, including the exhibits thereto, the form of which is currently on file with the Clerk of Council, and authorizes the Mayor of the City to execute the Amendment to Management and Maintenance Agreement on behalf of the City, with such changes, not inconsistent with this ordinance or materially adverse to the City, as shall be approved by the Mayor. The execution of the Amendment to Management and Maintenance Agreement by the Mayor shall be conclusive evidence of such approval.

SECTION 2. Waiver of Redeveloper Approval of Optional Redemption of Bonds. This council hereby approves any waiver by the Redeveloper of any approval rights of the Redeveloper in connection with the optional redemption of the Bonds.

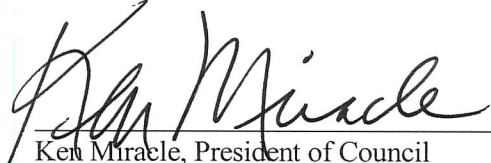
SECTION 3. Related Actions, Agreements and Approvals. This Council further authorizes the Mayor, the Clerk of Council, the Law Director, the City Auditor, or other appropriate officers of the City to prepare and sign all agreements and instruments and to take any other actions as may be appropriate to implement this Ordinance.

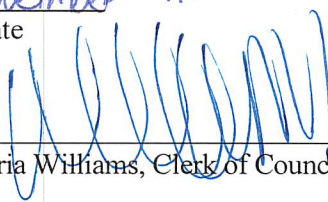
SECTION 4. Open Meetings. It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were passed in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Ordinance Authorizing Amendment to Management and Maintenance Agreement (with Emergency provision)

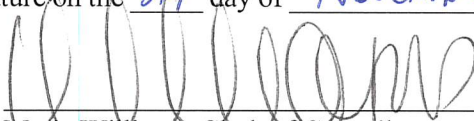
SECTION 5. Effective Date. This Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health and safety of the City and its inhabitants for the reason that this Ordinance must be immediately effective to ensure the safe and efficient operation of Project in coordination with neighboring institutions, wherefore, this Ordinance shall take effect and be in force from and immediately after its adoption.

PASSED: November 24, 2020
Date


Ken Mirale, President of Council

ATTEST: 
Maria Williams, Clerk of Council

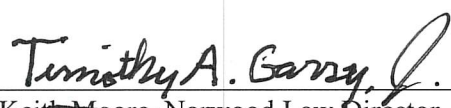
The duly appointed Clerk of Council attests that this ordinance was passed at a regular meeting of Norwood City Council on the 24 day of November, 2020, in compliance with the rules of Norwood City Council and the laws of the State of Ohio. The foregoing ordinance was submitted to the Mayor of the City of Norwood, Ohio for his signature on the 24 day of November, 2020.


Maria Williams, Clerk of Council

APPROVED 01 DEC 20
Date

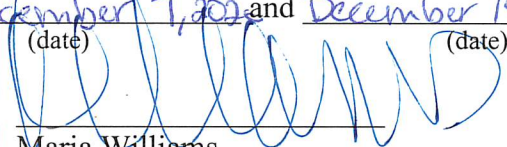

Victor Schneider, Mayor

Approved as to form:


~~Keith Moore~~, Norwood Law Director
Asst. #0032901

CERTIFICATION OF PUBLICATION:

Maria Williams, the duly appointed Clerk of Council, attests that this Ordinance was published in the Cincinnati Enquirer on December 7, 2020 and December 14, 2020.
(Name of Newspaper) (date) (date)


Maria Williams
Clerk of Council

ORDINANCE READINGS

1st Reading _____
Date

2nd Reading _____
Date

3rd Reading _____
Date

All 3 Readings 11-24-2020
Date

Tabled _____
Date

Vetoed _____
Date

Ordinance Authorizing Amendment to Management and Maintenance Agreement (with Emergency provision)

AMENDMENT TO MANAGEMENT AND MAINTENANCE AGREEMENT

THIS AMENDMENT TO MANAGEMENT AND MAINTENANCE AGREEMENT ("Amendment") is entered into this 1st day of November, 2020 between the CITY OF NORWOOD, OHIO, an Ohio municipal corporation (the "City") and DANAMONT SQUARE, LLC, a Delaware limited liability company (the "Redeveloper") under the following circumstances:

A. The City and the Redeveloper are parties to a certain Management and Maintenance Agreement effective September 13, 2013 (the "Management Agreement") affecting real property described in Exhibit A and Exhibit B attached to the Management Agreement.

B. The Management Agreement contemplated that "Metering Devices" (as defined in the Management Agreement) would be utilized to collect fees for parking lots or other parking facilities.

C. The City and the Redeveloper now desire to change the method of managing and charging for the use of some of the parking lots and spaces covered by the Management Agreement, subject to the terms and conditions contained in this Amendment.

NOW, THEREFORE, in consideration of the mutual agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by both parties, the City and the Redeveloper hereby agree as follows:

1. Capitalized Terms. All capitalized terms in this Amendment not typically capitalized and not otherwise defined in this Amendment shall have the meanings assigned to such terms by the Management Agreement.

2. Removal of Meters. Redeveloper shall have the right, at no expense to the City, to remove and/or disable the Metering Devices located within the areas as generally shown on Exhibit A attached hereto and made a part hereof (such areas hereinafter referred to as the "Parking Pass Areas"). The Metering Devices removed by the Redeveloper shall remain the Property of the City, and the Redeveloper shall deliver the removed Metering Devices to the City as directed by the City.

3. Parking Passes and Sale of Parking Passes. Once Redeveloper has removed the Metering Devices from any of the Parking Pass Areas, Redeveloper may sell parking passes for the parking spaces located within the Parking Pass Areas utilizing decals, stickers or other methods (such passes hereinafter referred to as "Parking Passes") so long as the Parking Passes are for terms of no longer than three (3) months. In order to further the economic development goals of the City, the Redeveloper may prioritize the sale of Parking Passes to tenants and customers of the Site. The Redeveloper shall have the right to install signs within the Parking Pass Area designating the parking spaces therein to be reserved for Parking Pass owners only. In addition to the foregoing, and also to further the City's economic development goals, the Redeveloper may post

signs designating certain parking spaces within the Parking Pass Area to be for the use by office employee and visitor parking only and retail employee and visitor parking, including for limited hours or time periods (the "Designated Signage"). In all events, the City may require the Redeveloper to (i) not renew Parking Passes, and/or (ii) upon 180 days notice, remove Designated Signage, in each case if the City determines in its reasonable discretion that there is a need for more transient parking to foster its economic development goals at the Site.

4. Parking Pass Fees. All amounts collected by the Redeveloper from the sale of Parking Passes ("Parking Pass Fees") shall be accounted for by the Redeveloper in the same manner as Parking Fees under the Management Agreement and shall be held and transferred by the Redeveloper to the Trustee for the Maintenance Fund in the same manner as the Monthly Parking Revenues, all pursuant and subject to the terms and conditions of the Management Agreement. All such Parking Pass Fees collected by Redeveloper shall be deemed to be "Parking Fees" and "Monthly Parking Revenues" for all purposes under the Management Agreement.

5. Enforcement. The Redeveloper may enforce the use of the parking spaces within the Parking Pass Areas for holders of Parking Passes only, enforce the office and retail marked spaces, and enforce the use of the meters for the remaining metered parking spaces by all reasonable means, including without limitation, towing violating vehicles, provided Redeveloper complies with all applicable legal requirements with regard to towing vehicles. The City shall cooperate with the Redeveloper's efforts to enforce the appropriate use of parking spaces as described above in this paragraph.

6. Maintenance and Repair. The parking spaces within the Parking Pass Areas shall remain Public Improvements to be maintained and repaired by the Redeveloper pursuant and subject to the terms and conditions of the Management Agreement.

7. Notices. The Redeveloper's mailing address for purposes of the Management Agreement is 643 West Court Street, Cincinnati, Ohio 45203, Attn: Andrew Beiting. The Redeveloper's 24-hour emergency contact information is:

Name: _____
Job Title: _____
Email Address: _____
Telephone No.: _____

8. Conflicts with Management Agreement. To the extent the terms or provisions of this Amendment conflict with the terms and provisions of the Management Agreement, the terms and provisions of this Amendment shall prevail.

9. Ratification of Management Agreement. Except as specifically modified by the terms and provisions of this Amendment, the terms and provisions of the Management Agreement remain in full force and effect and unmodified and shall apply to the matters addressed in this Amendment. The City and the Redeveloper hereby ratify the Management Agreement, as modified by this Amendment.

10. Covenants Running with the Land. The provisions of this Amendment shall run with the land and shall inure to the benefit of and be binding upon the City and Redeveloper and their respective successors and assigns. This Amendment may be recorded in the Hamilton County, Ohio Recorder's Office.

[Remainder of page intentionally left blank – signature pages follow.]

Signed as of the day and year first above written.

DANAMONT SQUARE LLC,
a Delaware limited liability company

By: DanaMont Member LLC,
an Ohio limited liability company
Its: Manager

By: Messer Development Company, LLC
an Ohio limited liability company
Its: Daily Manager

By: _____
Name: _____
Title: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by _____ of Messer Development Company, LLC, an Ohio limited liability company, on behalf of such limited liability company, as the Daily Manager of DanaMont Member LLC, an Ohio limited liability company, on behalf of such limited liability company, as Manager of Danamont Square LLC, a Delaware limited liability company, on behalf of such limited liability company. No oath or affirmation was administered to the signer.

Notary Public

THE CITY OF NORWOOD, OHIO,
an Ohio municipal corporation

By: _____
Name: _____
Title: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by _____, the _____ of The City of Norwood, Ohio, an Ohio municipal corporation, organized and existing under the Constitution and laws of the State of Ohio, on behalf of such municipal corporation. No oath or affirmation was administered to the signer.

Notary Public

APPROVED AS TO FORM:

Name: _____
Title: _____

This Instrument Prepared By:

Richard D. Herndon, Esq.
Griffin Fletcher & Herndon LLP
3500 Red Bank Road
Cincinnati, Ohio 45227
(513) 421-1313

